GOVERNMENT OF MYSORE.

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT (LABOUR)

Labour Dispute :—Industrial Dispute between the Workmen and the Management of Mysore Machine y Manufacturers, Ltd., Mysore Road, Bangalore.

Award of the Additional Industrial Tribunal, Bangalore—Published.

Read the following Papers :—

(i) Letter A I T No. 1058/67-68, dated 4th March 1969, from Shri V. C. Ramachandran, Presiding Officer, Additional Industrial Tribunal, Bangalore.

BEFORE THE ADDITIONAL INDUSTRIAL TRIBUNAL, BANGALORE.

Dated 2nd March 1968.

PRESENT.

Shri V. C. Ramachandran, B.A., B.Sc. (London) Bar-at-law,
... ... *Presiding Officer.*

A.I.D. No. 13 of 1967.

First Party :—		Second Party :—
Workmen of Mysore Machinery Manufacturers, Ltd, Mysore Road, Bangalore.	*Vs.*	Management of Mysore Machinery Manufacturers, Ltd., Mysore Road, Bangalore.

Appearances.

Sri V. A. Mohanrangam, Advocate, Bangalore .. *For the I Party.*
Sri V. N. Satyanarayan, Advocate, Bangalore ...*For the II Party.*

Reference.

G. O. No. LMA 259 LLD 67, Bangalore, dated 26th April 1967.

AWARD

An Industrial Dispute between the Workmen and Management of Mysore Machinery Manufactures, Ltd., Mysore Road, Bangalore has been referred by the Government of Mysore by their Order No. LMA 259 LLD 67, dated 26th April 1967, under Section 10 (1) (d) of the Industrial Disputes Act, 1947. The points of dispute referred are as follows:—

"(1) Is the stoppage of work in the Mysore Machinery Manufacturers, Ltd., Bangalore, the result of a strike or a lock-out?

(2) Whether the action of the management of Mysore Machinery Manufacturers Ltd., Mysore Road, Bangalore in dismissing 267 workers as mentioned in the annexure is justified?

(3) Are the 267 dismissed workers of the Mysore Machinery Manufacturers, Ltd., Mysore Road, Bangalore, mentioned in the annexure entitled for reinstatement with back wages and continuity of service?"

2. The workmen of the Mysore Machinery Manufacturers, Ltd., who would be referred to hereafter as the I Party, are represented by the Mysore Machinery Manufacturers Employees' Trade Union. They contend that the management which is the II Party, has contravened the award passed in I. D. No. 5 of 1963 with regard to their service conditions. It appears the management put up a Notice directing the workmen to encash the leave at credit, refused to grant leave at short notice, reduced the quantum of earned leave, etc., without following the procedure for change of service conditions. They had also recruited outside labour and refused to re-employ the retrenched workmen. In view of the unfair labour practice resorted to by the II Party several disputes were taken up in conciliation which were pending before the Conciliation Officer.

3 On 29th March 1967 the Foreman of the Foundry department was asked by the management to give the names of certain workers who were alleged to have committed acts of misconduct inside the Foundry Department. The workmen met the superintendent and pointed out that no misconduct had been committed. The Superintendent reported the incident to the Director who enquired of the Foreman and other four leading hands of the names of those who went to the Superintendent's office to represent the case of the workmen. The Foreman and

the otheres having failed to give the name's a Show Cause Notice was issued to them and the Foreman and the other four hands were suspended from work with effect from 1st April 1967. The action of the Management in suspending the Foreman and the four leading hands resulted in provocation of the workmen who were agitated about the order of suspension and demanded its withdrawal. The demand resulted in the management suspending 284 workmen and subsequently dismissing them on 1st April 1967. The dismissal order further provoked the workers and they refused to go out after the usual working hours on 1st April 1967 until the notices of the suspension and the dismissal orders against them were withdrawn The workmen however worked on 1st April 1967 and 3rd April 1967 and 4th April 1967 12th April 1967 being a Sunday and a holiday. But on 5th April 1967 the II Party management disconnected the electric supply to the running machines and refused to supply work to the workers inspite of the workers willing to work. Subsequently the II Party passed another order dismissing all the 284 workmen without following the standing orders and rules of natural justice. On 4th April 1967 the first dismissal was cancelled and fresh charge sheets were issued directing the workmen to submit their explanation to the Enquiry Officer and appear for an enquiry at 12 NOON on 6th April 1967. The workmen submitted their explanations on that date and waited for the enquiry to begin. They allege that no enquiry was held and they were not called in for any enquiry. There seems to be however an enquiry report made up and concocted with a view to victimise the workers. The I party contends that the order of dismissal is illegal and is in contravention of Sec. 33 of the Industrial Disputes Act. They pray that the II Party be directed to provide work forthwith and to pay full wages and other benefits from the date of refusal to provide work to the date they are reinstated in the factory. They further state that on 7th May 1967 morning they had worked from 11-00 A.M. to 4-00 P.M as the management connected the electric current and allowed them to work, but on 8th May 1967 the II Party again disconnected the electric current and refused to provide work. The I Party submits that the order of dimissal is *mala fide*, victimisatory, against all principles of natural justice, against standing orders and in contravention of Sec. 33 of the Industrial Disputes Act. They pray that the reliefs above mentioned may be granted to them.

4. The II Party contends that the 1st point of dispute *viz.*, whether there was a strike or a lock-out, does not fall under any

of the matters specified in the second Schedule to the Industrial Disputes Act and hence this tribunal has no jurisdiction to adjudicate upon it. The II Party states that it has not infringed any of the Rules and Regulations governing the service conditions of the employees. The management has always a right and freedom to recruit new labourers to cope up with the work of the factory. They deny that they had resorted to any unfair labour practice. The various disputes were taken up for conciliation and a failure report was made by the Conciliation Officer on 22nd April 1967. They admit that the Foreman and the four leading hands were asked to submit the names of the workers who behaved in an unruly manner. As those names were not given they were suspended and enquiries were initiated. Subsequently on their expressing their difficulties in giving the names of the miscreants, the suspension order was withdrawn. The workman overstayed in the factory on 1st April 1967. They were issued charge sheets on 4th April 1967 and were suspended from work pending result of the enquiry posted on 6th April 1967. As the dismissed workmen refused to leave the factory premises and continued to stay there day and night and handled the machinery unauthorisedly, the management had to disconnect the electric supply from 5th April 1967. The workers submitted their explanations on 6th April 1967 and an enquiry was held which was not attended by any of the workmen, at the General Manager's office. The workmen deliberately abstained from attending the enquiry. Subsequently the Director examined witnesses with regard to the enquiry after giving due notice to the workmen. The workers were dismissed but they remained in the factory and continued to do so till they were rejected by the police after the High Court Order dated 6th July 1967. The Order of dismissal is valid, legal and binding on the workers. The workers had been suspended from work from 4th April 1967 and the company has rightly disconnected the power as the workers in spite of the suspension order, tried to work the machines in the factory against the specific orders of their superiors. The dismissed workers have been guilty of serious misconduct, violation of the standing orders and indiscipline and their subsequent conduct in refusing to vacate the premises and the other illegal acts of trespass prove beyond doubt that they are indisciplined and not entitled to any of the reliefs prayed for.

5. In addition to the points of dispute the following issues were framed by this tribunal.

"1. Whether the I Party's dispute referred to this tribunal *viz.*, is the stoppage of work in the Mysore Machinery

Manufacturers, Ltd., Bangalore, the result of a strike or a lock out, does not arise for adjudication and whether the whole reference is bad in law.

2. Whether the management forced an illegal lock-out against all the workmen in the factory.

(3) Whether the principles of natural justice were not observed and whether there was unfair labour practice or victimisation on the part of the management in dismissing the workmen.

(4) Whether proper enquiries as per rules of the Standing Orders were held against the workmen and whether the workmen deliberately absented themselves from attending the same.

(5) Whether the Order passed by the Director in dismissing the 267 workmen is valid and legal and cannot be questioned by the I Party?

(6) Whether the workers are entitled to be reinstated and if so, on what terms?

(7) Whether the dismissed workers have been guilty of serious misconduct and in violation of standing orders, indiscipline and have been lawless and whether their conduct has been such as to defy all discipline?

(8) What relief, if any, the workers are entitled to?"

6. Before going into the various matters in issue between the parties it would be necessary to recall the main events which took place in the factory and which are not very much disputed. It is common ground between the parties that there have been for some time past differances between the management and the labour. Those differences were in regard to leave matters implementation of the interim recommendations of the Central wage Board for Engineering industries and the question of employing the employees retrenched in the place of those new labour who had been recruited in the factory. These differences got accentiated after the new managing Director Cherian took over office. It appears he has acted in contravention of the award passed by the Industrial Tribunal in I. D. No 5/63 and curtailed without notice of change certian benefits enjoyed by the workmen under that award. He is stated to have started changing service conditions by cutting the leave facilities not making promotions according to seniority, filling up vacancies and refusing to take back the retrenched employees at the time the vacancies were filled up. All

these disputes were taken up in conciliation which ended in a failure on 12th April 1967. It was under those circumstances that suspension orders were issued to the Foreman and the four leading workers with regard to some incident that is alleged to have taken place in the Foundry Department. The suspension orders were to take effect from 1st April 1967. According to the workmen the suspesnion of the Foreman and 4 leading hands in the Foundry Department was because of their refusal to disclose the names of those workmen in the department who interviewed the Superintendent of the Foundry Department and argued with him about the complaint of low production in the department. In any event we are not concerned so much with the suspension of the Foremen and the four leading hands which was subsequently recinded by the management after taking their explanations. The suspension of those persons in the Foundry Department provoked the other workmen who stayed inside the factory after the working hours on 1st April 1967 and refused to go out inspite of being asked to do so. The Managing Director immadiately dismissed about 284 workers but subsequently found out that the dismissal order was invalid as it was not in accordance with the Standing Orders with the company and therefore cancelled the dismissal order and on 4th April 1967 he issued charge sheets to the said workers making certain allegations against them and called upon them to submit their explanations to the said charge sheets on 6th April 1967 and to attend an enquiry on the very same day in the General Manager's Office. The workers gave their explanations at the Time Office on 6th April 1967 but are stated to have absented themselves during the enquiry. No enquiry however was held on 6th April 1967 but Enquiry Officer adjourned it to the next day *i.e*, 7th April 1967 by publishing the adjournmet on the Notice Board of the factory. Even on 7th April 1967 none of the workers who had been charge sheeted, participated in the enquiry held with the result that the enquiry was conducted *ex parte* and witnesses were examined by the Enquiry Officer. He found the workmen guilty of the charges levelled against them and forwarded his findings to the Managing Director. The Managing Director issued fresh Notices to the workmen calling upon them to show cause why they should not be dismissed. The workmen gave explanations to the effect that there was no enquiry at all and prayed director that the matter may be enquired into. The management however refused to hold a separate enquiry but the director in-charge M. C. Cherian took evidence on the question whether an enquiry was held or not and

finding that there was a proper enquiry, he passed an order of dismissal on 12th April 1967 against all the 284 workers. The workers remained in the factory day in and day out and refused to go out. The management switched off the electric current on 5th April 1967 and the workers remained inside the factory till an order was brought from the High Court on a Write Petition filed by the management directing the police to eject the workers from the premises of the factory. The factory resumed work on or about 9th June 1967. The question of reinstatement of the dismissed employees which was also taken up before the Conciliation Officer was subsequently referred to this tribunal. Subsequent to the reference the Director in-charge took back 160 workers on their giving an assurance that they would not take part in the proceedings before this tribunal, as fresh labour without back wages and without continuity of service. The first issue that has been referred is the question whether the stoppage of work is a result of strike or lock-out. The management contend that that issue does not arise and in any case is not within the competence of this tribunal to adjudicate. The 3rd Schedule to the Industrial Disputes Act gives the matters within the jurisdiction of the tribunal and this question *viz* to adjudicate whether the stoppage of work was as a result of strike or lock-out is not one of those matters. The management therefore rightly contend that that question does not arise and is not within the jurisdiction of this tribunal. Besides, the question as to whether the stoppage of work is due to a strike or lock-out, is purely an academic one which is unnecessary for determination. The stoppage of work undoubtedly was due to the disconnection of electric current by the management on 5th April 1967. They had to take this course according to them because some of the workmen who had been dismissed, started to handle the machinery without permission which they are not entitled to do. The management apprehended that damage would be caused to the machinery by mis-handling by the dismissed employees and hence they shut off the electric current. Hence, the stoppage of work was by the management because of the apprehension to the machinery by the dismissed employees mis-handling it. It is not the case of the workers that they struck work. On the contrary they stated that they continued to work on the 3rd and 4th of April 1967 and on the 5th, because the current was cut off, they had to keep idle. In any event nothing turns out on that issue and I agree with the management that the issue whether the stoppage of work was as a result of a strike or lock-out, is beyond the jurisdiction of this tribunal to adjudicate upon.

7. The most serious consideration in this case is with regard to the dismissal of 284 workers by the management on the findings of the Enquiry Officer. Evidence has been led in before this tribunal also to justify the order of dismissal by the management. But the authorities lay down the proposition that the evidence before this tribunal cannot be looked into unless this tribunal is satisfied that the findings of the domestic tribunal have to be set aside on any one of the four grounds *viz.*, (1) that the management acted *malafied*, (2) that the Enquiry proceeding were conducted in violation of the principles of natural justice, (3) that the findings of the domestic tribunal are perverse and such that no reasonable person would reach those conclusions to which the Enquiry Officer had come to and (4) that there has been victimisation and unfair labour practice resorted to by the management. That position has been held in a number of decisions and reference may be made to a few of them. In A.I.R. 1963 295, the Supreme Court has laid down as follows:—

"Where an employer serves the relevant charge or charges on his employee and holds a proper and fair enquiry, it is open to him to act upon the report submitted to him by the Enquiry Officer and to dismiss the employee concerned. If the enquiry has been properly held, the order of dismissal passed against the employee as a result of such an enquiry can be challanged if it is shown that the conclusions reached in a departmental enquiry were perverse or the impugned dismissal is vindictive or *malafide* and amounts to unfair labour practice. In such an enquiry before the tribunal it is not open to the tribunal to sit in appeal over the findings recorded by the domestic enquiry. When a proper enquiry has been held, it will be open to the Enquiry Officer holding the domestic enquiry to deal with the matter on merits *bona fide* and come to his own conclusions. Where it appears that the departmental enquiry is not fair in the sense that proper change has not been served on the employee or proper and full opportunity has not been given to the employee to meet the charge, or the enquiry has been effected by other grave irregularly vitiating it, then the position that the tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee itself. The same result follows if no enquiry has been held at all. In regard to cases falling under the last category

it is however open to the employer to adduce additional evidence to satisfy the tribunal that the dismissal of the emplyee concerned is justified and in such a case the tribunal would give opportunity to the employee to meet that evidence and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it."

The question therefore reduces itself as to whether the finding of the Enquiry Officer are liable to be set aside on any of the four grounds mentioned above.

8. The case of the workers is that in the instant case all the four grounds which are sufficient to set aside the findings of the domestic enquiry are found to exist. They allege firstly that the Director in-charge has acted throughout malafide, secondly that no reasonable opportunity has been given to the workmen to meet the charges levelled against them, thridly that the findings of the domestic tribunal are perverse and lastly that the punishment was not inflicted for the misconduct alleged to have been committed by the workmen but for victimisation of the workers in order to force them to desist from trade union activities and as a means of changing the service conditions which amounts to unfair labour practice. It would therefore be necessary to take those grounds one by one and find out how far they are substantiated.

9. It was strenuously argued that the entire proceedings were taken by the Director-in charge with a malafide intention. It may be stated at the outset that the Director in-charge has not approached the labour problem of the factory with that tact and understanding which is necessary for promoting industrial harmony between the workers and the management. He has come to look upon the workers more has his servants who should act according to his desires and not as partners in the glorious undertaking of producing wealth. His attitude seems to be one of teaching a lesson to the workers by *en masse* suspending them and dismissing them. He started with suspending the Foreman and the four leading hands in the Foundry Department and subsequently suspending and dismissing 284 workers without so much as issuing charge sheets or holding an enquiry. Better counsel seems to have prevailed and he cancelled that dismissal order and issued charge sheets to the workmen on 4th April 1967 which the workmen would have come to know only on 5th April 1967. Without giving them even breathing time as it were, he

posted the enquiry to be held on 6th April 1967 hardly within 48 hours of issuing the charge sheets to the workers. He subsequently passed the dismissal order against the workers on 12th April 1967 on the findings of the works Manager who is himself a witness to the events that had taken place There has been no independent and impartial enquiry and the Works Manager is both a witness to the incident as well as the Enquiry Officer. The conduct of the Director in-charge according to his own evidence betrays the malafide intention with which the entire proceedings have been started in order to get rid of the old workers who had been troubling the management with their persistent demands and to substitute in their place new labour or even the old labour if they are amenable to the unfair conditions imposed by the management. The evidence of the Director in-charge who is examined as M. W. 9 shows that he was not so much anxious to get rid of indisciplined workmen but to have only the workmen who subscribe to his conditions. The following statement made by him shows the malafide intention of dismissing the employees :—

" We started the factory on 9th June 1967 with non-dismissed employees. About 40 workers came to my house and represented that they wanted work as they were starving. I said that I would not take them if they wanted to fight their case in the court. They said that they would not fight their case in the court and that they were misguided and that they would take work even on casual basis. I told them that they would be givn work on casual basis and after one or two years disciplined service I would consider giving them the past services to their credit. I asked them to report to the factory. They gave Ex. M. 19 series I dictated Ex. M. 19 series as requested by the workers and got them cyclostyled at the office. We called the workers, explained to them and got their signatures provided they understood and agreed."

That statement made by the Director in-charge shows the unfair labour practice that has been resorted to. The dismissal was made with a view to make the workers starve and reach stage when they will be driven to a position to take up work on any conditions whatsoever. If that is not unfair labour practice it is not possible to imagine what else is. The wording in Ex. M19 series shows that dismissals had been made with a view to break

up trade union activities. This is what the workers in Ex. M19 Series are alleged to have stated :—

> "I also beg to bring to the kind notice of the court that the present office-bearers of the Mysore Machinery Manufacturers Ltd., Trade Union, have no authorisation to represent me and also to represent me in regard to any dispute pending or likely to occur in future with the company."

There is therefore considerable force in the contention of the workmen that the dismissal order was made malafide and for extraneous reasons for the purpose of changing the service conditions of the workmen. I am therefore of the view that the contention of the workmen that the management acted malafide with a view to victimise the workmen for their trade Union activities and with a view to alter illegally the service conditions of the workmen, is well founded. On that ground alone the findings of the domestic tribunal and the punishment imposed by the Director in-charge are liable to be set aside.

10 The next ground urged by the I Party is that the enquiry proceedings have not been conducted in accordance with the principles of natural justice. The rules of natural justice as observed in A.I.R 1963 Bombay–121, required that the party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the Opposite Party should be taken in his presence and that he should be given an opportunity to cross-examine the witnesses examined by that party and that no material should be relied upon against him without his being given an opportunity of explaining them. In the instant case the workmen were not given any opportunity of adducing all relevant evidence on which they rely. The evidence of the II Party was not taken in the presence of the workmen. No opportunity was given to the workmen to cross-examine the witnesses examined by the II Party. The entire pro-Proceedings were conducted behind the back of the workmen The management tried to justify the procedure on the ground that the workmen are themselves to blame as they deliberately absented themselves from participating in the enquiry proceedings. We have now to consider whether the workmen deliberately absented themselves from the enquiry. It will be noticed that the charge sheets were issued on or about 4th April 1967 and the enquiry was to be held on 6th April 1967 and the workmen were asked to give their explanations either before or at the time of the

enquiry. The workmen took the explanation but was not received at the General Manager s office where the enquiry was to be held, but was received by the Chief Time-keeper at the Time Office. The Chief Time-keeper who received these explanations must have directed them to the General Manager's office for the enquiry. He has issued no such directions whatsoever and the workmen naturally thought that their explanations will be considered and a date fixed for the enquiry as even the standing orders contemplate the receipt of explanation and the enquiry to be held on two different dates. The Enquiry officer himself felt that it was not proper to proceed *ex parte* on 6th April 1967 and acc rd ng to him he adjourned the case to 7th April 1967 so as to give an opportunity to the workmen to take part in the enquiry proceedings. If the Enquiry Officer thought that the workmen should be notified about the adjournment of the enquiry to the 7th, then proper notice should have been issued to the workmen to attend the enquiry on the 7th. No such notices have been issued to any of the wo kmen although all of them are alleged to have been within the factory premises. A notice, it appears, was put up on the Notice Board which is insufficient even according to the standing orders according to which, if an employee is not available for service of any n otice, the notice should be posted in a conspicuous place in front of his r-sidence or the same sent by post to his last known address and either a copy of the notice is forwarded to the trade union of which he is a member or it is notified in any local newspaper (Standing Order No. 33). No notice of the case being posted on the 7th was sent to any workmen nor any notice forwarded to the trade union of which the workers are members nor any notice was published in the local newspapers. Hence, the entire proceedings conducted *ex parte* are opposed to the principles of natural justice and proper notice has not been issued to the workers.

11. Even the enquiry conducted by the Enquiry Officer is not one which any impartial person will conduct, especially in the absence of the delinquent. The enquiry proceedings show that all the evidence is given by the Enquiry officer himself and they are merely put into the mouth of the witnesses. To give one illustration, the way in which the examination of witnesses had gone on before the Enquiry officer is as given below :—

"*J.—Arogyaswamy—M. W. 1*

Q.—I am reading the list of workers against whom charges have been framed and you are asked to state whether

these workmen left the factory premises after 4 P. M. on 1st April 1967.

A.—They did not leave

Q.—Were the workers stated above loitering in the factory?

A.—Yes.

Q.—Did the Chief Time Keeper instruct you not to allow the said 284 workers entry into the factory with effect from the evening of 1st April 1967 without the previous permission of the General Manager or the Personnel Officer?

A.—Yes.

Q.—Have you strictly adhered to this till date?

A.—Yes.

Q.—Did any of the said 284 workers leave the factory premises?

A.—Some of the 284 workers left the factory premises after they entered the factory premises on 1st April 1967 and after the said workers entered the factory on 3rd April 1967, none of them left the factory premises till this time. The Union Office Bearers who were allowed to go outside the factory and were allowed to get into the factory."

It would be seen from the examination that the witness has merely nodded affirmatively to the questions put by the Enquiry Officer and nothing seems to have come out of his mouth, which is of any importance. It is no doubt true that the law of evidence is not strictly applicable to the proceedings before a domestic tribunal, but at the same time a witness, especially in the absence of the delinquent must himself give the facts of the case and not merely nod to the suggestion made by the Enquiry Officer. The enquiry therefore smacks of bias on the part of the Enquiry Officer.

12. One other serious infirmity with which the enquiry suffers is that the entire proceedings have been conducted *en masse* against all the workmen. The standing orders contemplate an enquiry against each individual workman in respect of an act of

misconduct committed by him. The enquiry *en masse* against all workmen is also against the principles of natural justice. especially as there is evidence to show that only some of the workmen have committed particular acts of misconduct. The Enquiry does not reveal as to which out of the 284 workmen have committed the misconduct and which of them are innocent. M. W. 1 for instance, says that some of the 284 workers left the factory premises on 1st April 1967. We do not know which of them left and which of them remained in the factory on 1st April 1967. Besides the evidence itself does not disclose that all the acts of misconduct have been committed by the workmen. They have been charged firstly for not leaving the factory premises on 1st April 1967, secondly for stopping work singly and in combination with others, thirdly according to their will and pleasure for starting and stopping the machines and fourthly loitering within the factory premises without permission and lastly damaging the work in progress and other property of the factory, and these are said to be misconducts under Standing Orders clause 36 of sub-sections (1), (2), (18), (19). (21), and (22). The Enquiry Officer found them guilty of misconduct under Standing Orders No. 34 (22) read with Sec. 36 (2), 36 (1), 36 (2), 36 (18), 36 (21) and 36 (22). The evidence before the Enquiry Officer, if it were to be accepted, is to the effect that the workmen remained in the factory premises even though they were instructed that it is an illegal offence and that they were loitering about within the factory premises and that they operated the machines and handled the equipment in the factory against orders. They were found guilty on those materials for offences under Standing Order 34 (22) read with 36 (2) which is:—

> "entering the factory premises before working hours or remaining within the factory premises after working hours without permission,"

Sec.36(1) which is wilfull insubordination or disobedience of a lawful and reasonable order of a superior and 36(2) which is striking or stopping work in contravention of any law, Sec.36 (18) which is conduct on the part of an employee likely to endanger the life or safety of other employees of the factory establishment, 36 (1) loitering within the factory premises while on duty or absence without permission from the appointed place of work and 36 (22) wilfull damage to work in process or to any other property of the factory. The findings of the Enquiry Officer are perverse because all the evidence that has been adduced discloses, if at all only three offences *viz.*, being in the factory premises after,

working hours without permission, loitering within the factory premises and willfull disobedience of the orders of the superior. There is no evidince of will-full damage done to work or property of the factory by the workmen. On the contrary the Enquiry Officer himself finds in his report that no violent act or conduct on the part of the workmen charged, is made or proved by any evidence. Nor is there any evidence that the workers have stopped work. On the contrary the allegation made by the management is that the workers continued to work although they had been suspended. Hence, the only charges that have been proved before the Enquiry Officer are with regard to staying-in without permission after working hours, loitering within the factory premises and disobedience to the orders of the superior. So far as the first two offences are concerned, they can be punished with fine and do not entail dismissal. So far as the 3rd charge is concerned, when the worker is under suspension, the question of his refusal to obey his superior does not arise because the standing orders during the suspension period must be deemed to have been kept in abeyance. He cannot for instance be punished for coming late or absenting himself without leave when he is under suspension, because the contractual obligations embodied in the standing orders do not apply to a suspended employee during the period of his suspension. He is, no doubt, liable for criminal acts committed by him while under suspension.

13. To sum up them, the proceedings before the Enquiry Officer and the punishment inflicted on the findings of the Enquiry Officer have to be quashed by virtue of the infirmities *viz.*, (1) the the *mala-fides* of the proceedings (2) victimisation and unfair labour practice, (3) violation of the principles of natural justice and (4) perversity of the findings of the Enquiry Officer. If the findings of the Enquiry Officer are set aside, then it is open to the tribunal to look into the evidence adduced before it and find out how far the management have justified their orders of dismissal.

14. The Management have examined as many as 9 witnesses and I shall now cofine myself only to the merits of the case against the workmen and not to the evidence regarding the enquiry proceedings. It may be stated at this stage that the plea of victimisation, unfair labour practice and *mala fides* which had been pressed into service for setting aside the proceedings before the Enquiry Officer are still available to set aside, the punishment imposed even on the evidence produced before this tribunal. On that ground alone even if the evidence before this tribunal were to be believed, the impugned order of dismissal is liable to be quashed

15 The evidence adduced by the management discloses that the workers remained within the factory premises after 4 P.M. on 1st April 1967 and refused to leave the factory in spite of the orders issued to them. There is also evidence adduced by the management that although the dismissed workers were not allotted any work, they started working on the machines without instructions. Hence, even if the management's entire evidence before this tribunal were to be accepted, only two offences have been made out *i.e.*, (1) staying within the factory premises after the working hours without permission and (2) disobedience to the orders of the superior in handling the machines when ordered not to do so. There is no evidence adduced before this tribunal of any other offences alleged to have been cominitted by the workmen. Of these two offences the workmen admit that they had stayed within the factory premises after the working hours on 1st April 1967 but deny that they were asked not to handle any of the machines. On the contrary they depose that they carried on work as usual on 3rd April 1967 and 4th April 1967 and it was only on 5th April 1967 that the current was switched off making it impossible to continue to work. So far as the first offence is concerned, the workmen are really guilty because they admittedly stayed without permission within the factory premises, but as stated before, that is not an offence which comes within the meaning of misconduct under the standing orders. That is only liable to be punished with fine under Section 34 (22) and the impugned order dismissing the workmen for that offence is not in accordance with the standing orders and therefore liable to be quashed. So far as the 2nd offence is concerned, there is no evidence as to which of the workers disobeyed the superiors and which of them are innocent, because the evidence does not say that all the workmen had disobeyed the superiors. G. S. Madhukar M.W. 2 says that some of the dismissed workers started working against instructions and he does not say who those workers were who disobeyed the instructions. Shankar Dutt M.W. 4 deposes that he did not allot work to dismissed employees and they did not do any work but sat down in the factory. In view of the evidence it is unsafe to convict all the workers for having disobeyed the orders of the superiors. Besides, the question of obeying the superiors does not arise as the contractual obligation under the standing orders were not in force while workmen were under suspension. There is also evidence on the side of the workmen that they were carrying on the work which remained unfinished without any obstruction by their superiors. In view of this infirmity the impugned order of dismissal cannot stand.

16. My findings on the other issues are :—

3rd issue

The principles of natural justice have not been observed and there was unfair labour practice and victimisation on the part of the management in dismissing the workers.

4th issue

No proper enquiries as per Rules and the Standing Orders were held against the workmen and the workmen had not deliberately absented themselves from the enquiry.

5th issue

The Order passed by the Director in dismissing the 267 workers is invalid and illegal.

6th issue

The workers are entitled to be rein stated

7th issue

The dismissed workers have not been guilty of serious misconduct entailing dismissal.

17. In the result in view my findings on the various issues, the dismissal of 270 workers, as mentioned in the annexure to the Order of Reference is not justified and they are entitled to reinstatement with continuity of service. The only question is whether they are entitled to back wages The workers admit that they remained within the factory after working hours without permission which is an offence for which the management are entitled to inflict a punishment of fine. In view of their admission of guilt for that particular offence, and their continuous stay within the factory premises without permission till they were evicted by the police on an order of the High Court, I feel justified in refusing to give back wages to them as their conduct did not deserve it..

18. I, therefore pass the following award. The 267 dismissed workers of the Mysore Machinery Manufacturers Ltd., Bangalore, mentioned in the Annexure to the Reference, are entitled to reinstatement with continuity of service but without back wages. The management of the said Company are directed to take them back into service within one month from the date of

the publication of this award. The parties are directed to bear their own costs as both parties are responsible for the unfortunate events that have taken place within the factory premises.

V. C. RAMACHANDRAN,

Presiding Officer,

2-3-1968

ORDER

Bangalore, dated 12th March 1968.

S. O. 802.—WHEREAS by State Government Order No. LMA 259 LLD 67, dated 26th April 1967, the Industrial Dispute between the Workmen and the Management of Mysore Machinery Manufacturers Ltd., Mysore Road, Bangalore was referred to the Industrial Tribunal, Bangalore for adjudication.

AND WHEREAS the Additional Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. MLA 259 LLD 67.]

By Order and in the name of the Governor of Mysore,

2266 G. G. PUROHIT, *Under Secy.*

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